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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,569	03/30/2004	Mark T. Mercer	10796.6803	3665
44538	7590	03/15/2006	EXAMINER	
DANIEL S. POLLEY, P.A. 1215 EAST BROWARD BOULEVARD FORT LAUDERDALE, FL 33301			SWINEHART, EDWIN L	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/812,569

Applicant(s)

MERCER, MARK T.

Examiner

Ed Swinehart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-16, 24, 26 and 29 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 17, 19-21, 23, 25, 27, 29 and 30 is/are rejected.
- 7) ☒ Claim(s) 6, 18 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,4,17,21,25,27,28 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Havlick.

Havlick discloses the claimed invention, including a tube **12** having an internal weight **23** at a first end, and an external buoyant foam member **36** disposed intermediate the first and second ends. The weight is held in place within the tube by means disposed within the tube, such as by adhesive or the like.

Re claim 28, the central buoyant section may be said to have first and second ends with consistent diameter thereinbetween.

3. Claims 1-4,17,20,21,25,27,28 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Cogliano.

Cogliano discloses the claimed invention, including an elongate tube, a weight disposed at and in a bottom end thereof, cylindrical floatable members **5** and **9** disposed intermediate the ends, and a loop **6** disposed on the upper end thereof.

Re the preamble and “when...”, such are considered to be a statements of intended use, carrying little/no weight in the claims as presented.

Re claim 20, the loop does not extend within that tube portion carrying the weight and float.

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Havlick in view of Lockwood, Jr. et al.

Havlick fails to show steel ballast, as he employs concrete.

Lockwood teaches the equivalency of steel and concrete when used as ballast.

It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute an equivalent steel ballast for the concrete of Havlick as taught by Lockwood.

Such a substitution could have been desirable at the time of the invention so as to provide for usage of whatever ballast materials were available at the time. Since such are equivalents, specific motivation need not be shown.

6. Claims 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havlick.

Havlick discloses the provision of reflectorized sheeting on the portion **41**, however fails to teach applied as a strip.

Walker teaches application of reflective tape to a buoy.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide as the reflective portion of Havlick, a reflective tape as taught by Walker.

Such a combination would have been desirable at the time of the invention so as to provide ease in application.

7. Claims 2 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havlick in view of Lunenschloss.

Havlick discloses use of bright reflective colors, but fails to specifically mention fluorescent colors.

Lunenschloss teaches coloring of a buoy thusly.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use as the bright colors of Havlick, fluorescent colors as taught by Lunenschloss.

Such a combination would have been desirable at the time of the invention so as to provide high visibility, even in low light.

8. Applicant's arguments filed 12/21/2005 have been fully considered but they are not persuasive.

Applicant argues that Cogliano fails to disclose an internally disposed weight.

In response, figure 2 of Cogliano clearly shows the weight received within the interior of the tube, and retained therein with a means **25** for preventing movement. The means **25** also being disposed inside. As claimed, "inside" does preclude portions from residing outside.

9. Claims 6, 18 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 8-16,24,26 and 29 are allowed.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-6688. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ed Swinehart  
Primary Examiner  
Art Unit 3617